

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
 High Point Preferred Insurance Company, :  
     Plaintiff,  
     against-  
     Madison Square Garden, L.P., et al.,  
     Defendants.  
 ----- X

Motion denied as  
moat. See Stipula-  
tion and Order at  
even date hereon.  
So ordered.

*L.M.N. - USAJ 4/20/09*

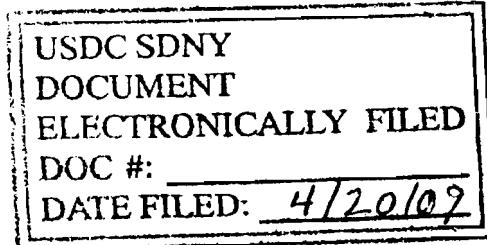
INDEX NO. 09 Civ. 410 (LMM) (AJP)  
**NOTICE OF MOTION**

**MEMO ENDORSED**

**MOTION BY DEFENDANT MADISON SQUARE GARDEN, L.P.  
TO DISMISS COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Madison Square Garden, L.P. (“MSG”) moves this Court for an Order dismissing with prejudice Count I of Plaintiff High Point Preferred Insurance Company’s (“High Point”) complaint. As set forth in the accompanying memorandum of law:

1. Count I of High Point’s complaint alleges that MSG violated the New York Dram Shop Act, N.Y. Gen. Oblig. Law § 11-101(1), and seeks damages equal to the amount of personal injury protection (PIP) benefits that High Point has paid as a result of the alleged violation.
2. Count IV alleges a cause of action against MSG’s general commercial liability insurer for PIP reimbursement pursuant to the New Jersey PIP reimbursement statute, N.J. Stat. Ann. § 39:6A-9.1.
3. The New Jersey PIP reimbursement statute, under which High Point has brought its claim, is the exclusive remedy for New Jersey PIP insurers to recover benefits they have paid.



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4. Under the PIP statute, an alleged tortfeasor that carries general commercial liability insurance coverage is immune from suit for PIP reimbursement, and a PIP insurer may seek recovery only from the alleged tortfeasor's insurer.
5. Even if the PIP reimbursement statute were not an exclusive remedy, a PIP insurer lacks standing to sue under the Dram Shop Act.

Accordingly, Count I of the complaint, High Point's sole claim against MSG, should be dismissed with prejudice.

Dated: April 6, 2009

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

Robert J. Candella, hereby certifies that, on April 6, 2009, I served the foregoing Motion to Dismiss and Memorandum of Law in Support on Behalf of Defendant Madison Square Garden, L.P. upon the following parties by causing a true and correct copy of the aforementioned papers to be delivered by the Court's CM/ECF system and/or via Federal Express overnight delivery:

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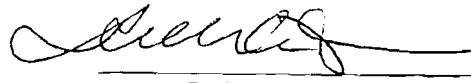
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Dated: April 6, 2009



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